

REMARKS

Claims 1-14 and 22-28 are pending. Claims 15-21 have been cancelled without prejudice or disclaimer. Claims 1-21 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,587,473 to Terry et al. (hereinafter "Terry") in view of U.S. Patent 5,513,212 to Bremer (hereinafter "Bremer"), and further in view of U.S. Patent 6,463,132 to Yoshida et al. (hereinafter "Yoshida"). These rejections are respectfully traversed.

Claims 1, 3-6, and 8-10 have been non-substantively amended to correct minor informalities.

Rejections Under 35 U.S.C. 103(a)

Claims 1-14 are allowable over Terry in view of Bremer and further in view of Yoshida, for the reasons that the combination of prior art relied on by the Examiner fails to anticipate each element of the claimed invention, and also because it would not be obvious to combine the prior art, as alleged. As previously discussed and as implicitly acknowledged by the Examiner by the withdrawal of the prior rejection, "network latency" is not disclosed or suggested by Terry. As such, it is difficult to understand how there could be any motivation to combine Terry with other art for the claimed invention, as Terry accomplishes its stated purposes without any need for consideration of network latency. While it is understandable why the system disclosed in Terry would be unattractive in light of its failure to solve the problems solved by the present invention by virtue of Terry's failure to utilize network latency concepts, Terry is nonetheless incompatible with systems that utilize network latency.

Furthermore, neither Bremer nor Yoshida disclose such systems. Neither Bremer nor Yoshida use the term "network latency" – how can network latency be disclosed by Bremer or Yoshida when that term, a well-established term in the art at the time the present application was filed, was not even used in either of those references? The answer is simple – **all of the art cited by the Examiner antedates the T.38 standard!** If the prior art rendered obvious the solutions to the problems addressed by the T.38 standard, which discloses and discusses the concept of network latency in detail, then **the solutions to the problems addressed by the T.38 Standard would have been obvious**

and there would have been no need for the T.38 standard! Standard setting bodies do not lightly take up the task of setting standards, and spend considerable amounts of time creating and approving the standards. It is therefore no surprise that none of the prior art, either alone or in combination, discloses the concept of network latency. The Examiner's assertion that it would be obvious to combine the cited references, even assuming *arguendo* that they disclose network latency, is also rebutted because there would have been no need for the T.38 standard if the Examiner were correct. The Examiner's position implicitly places the Examiner's determination of what is obvious and non-obvious above what was considered to be obvious and non-obvious by the body of *experts* in the art that sat on the standard setting committee that created and promulgated T.38. Clearly, if a group of experts in the art did not consider network latency to be obvious, then the Examiner's position – that one of ordinary skill in the art would have not only understood network latency to be obvious but would have also understood how to use network latency in the manner claimed – must be in error.

New claims 22 through 28 are presented in means plus function format to invoke 35 U.S.C. 112, ¶ 6. As such, in accordance with Federal Circuit law, the Examiner must identify the structure(s) disclosed in the specification and must further explain why the cited art anticipates such structures or renders them obvious if those claims are rejected over the prior art.

CONCLUSION

In view of the foregoing remarks and for various other reasons readily apparent, Applicant submits that all of the claims now present are allowable, and withdrawal of the rejection and a Notice of Allowance are courteously solicited.

If any impediment to the allowance of the claims remains after consideration of this amendment, a telephone interview with the Examiner is hereby requested by the undersigned at (214) 939-8657 so that such issues may be resolved as expeditiously as possible.

A response to the pending office action within the three-month extension period was due on September 18, 2005. September 18, 2005 fell on a Sunday, the statutory due date is September 19, 2005. A fee of \$1,020.00 for a three-month extension of time is believed to be due, for which a petition is hereby made, and a check in this amount is hereby enclosed. If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the deposit account of Godwin Gruber LLP, No. 50-0530.

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Respectfully submitted,

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